Supreme Court, U.S.
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IN THE

Supreme Court of the United States

SVERIGES ANGFARTYGS ASSURANS FORENING d/b/a THE SWEDISH CLUB,
Petitioner,

v.

GLOVEGOLD SHIPPING LIMITED,
Respondent.

Petition for a Writ of Certiorari to the District Court of Appeal of Florida, First District

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Under the Due Process Clause of the United States Constitution, is a foreign maritime insurance company subject to personal jurisdiction wherever it may be foreseeable that an insured ship may go?

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 14.1(b) and 29.6, the following list identifies all of the parties to the appellate proceeding in the District Court of Appeal, First District of Florida, whose judgment and opinion are sought to be reviewed.

Appellant below: Sveriges Angfartygs Assurans Forening d/b/a The Swedish Club has no parent corporation. No publicly held corporation owns 10% or more of its stock.

Appellee below: Glovegold Shipping Limited.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Sveriges Angfartygs Assurans Forening d/b/a The Swedish Club (TSC), respectfully requests this Court to issue a writ of certiorari to review the judgment and opinion of the District Court of Appeal of Florida, First District, holding that TSC was subject to personal jurisdiction in a lawsuit filed against it in the Circuit Court of Duval County, Florida.

OPINIONS BELOW

The opinion of the District Court of Appeal of Florida, First District, reported at 791 So. 2d 4 (Fla. Dist. Ct. App. 2000), is set forth in Appendix A. The unreported order of the District Court of Appeal denying rehearing is set forth in Appendix B. The unreported order of the Supreme Court of Florida declining review is set forth in Appendix C. The

judgment entered by the Circuit Court in and for Duval County, Florida, which had ruled that it lacked jurisdiction over TSC, is set forth in Appendix D. The Swedish Club's affidavit concerning jurisdiction (without exhibits) is set forth in Appendix E.

JURISDICTION

The District Court of Appeal of Florida, First District, issued its opinion on December 29, 2000. (App. 1a). Petitioners's timely motion for rehearing was denied on August 14, 2001. (App. 18a). The Supreme Court of Florida denied petitioner's timely petition for discretionary review on March 22, 2002. (App. 19a). Therefore, the jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fourteenth Amendment of the United States Constitution, which operates to limit the power of a state to assert in personam jurisdiction over a non-resident defendant. The pertinent portion of the Due Process Clause provides that:

> [n]or shall any State deprive any person of life, liberty, or property without due process of law.

U.S. Const. art. XIV, § 1.

STATEMENT OF THE CASE

TSC is an insurance company headquartered in Sweden that provides shipowners with insurance for vessels sailing throughout the world. (App. 2a). TSC issued a hull and machinery policy to Glovegold Shipping Company Ltd. (Glovegold), a Maltese company with its principal place of business in Greece, insuring Glovegold's ship the *Anthenor Express*, a Maltese-flag cargo vessel. (App. 2a-3a). The policy provided that it would be governed by the law of

Sweden. (App. 6a). Under Swedish law, all disputes involving maritime insurance must be decided by the Swedish Insurance Adjuster located in Sweden. (App. 6a). The policy was delivered in Glasgow, Scotland through a London based broker. (App. 31a). A Scottish company, Denholm Ship Management Ltd., managed the ship. (App. 3a). From 1990-1996, various companies chartered the ship to operate in and out of Florida ports, and the ship was docked in Florida when the policy was issued. (App. 3a-4a).

On February 5, 1996, the *Anthenor Express* suffered an engine failure near Jacksonville, Florida. (App. 4a). Because the ship could not proceed on its own power, it was towed to a shipyard in Jacksonville. (App. 4a-5a). After an inspection of the ship by an independent claims office, TSC denied coverage under the policy. (App. 5a, 32a).

Glovegold sued TSC in the Circuit Court of Duval County, Florida, alleging breach of insurance obligations. (App. 5a). TSC moved to dismiss the action for lack of personal jurisdiction and other grounds not pertinent here. (App. 5a). The Florida procedure for resolving disputes over personal jurisdiction is set forth in *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499 (Fla. 1989). (App. 8a). Both sides are permitted to file affidavits. (App. 8a). If there is no dispute over the relevant facts, the court decides the issue on the affidavits. (App. 8a). If there is a dispute of fact, the court conducts an evidentiary hearing. (App. 8a).

TSC's affidavit stated that it had no agents, employees, agencies, or offices in Florida, that it was not authorized to carry on any business in Florida, and that it did not do so. (App. 5a). The affidavit further pointed out that its only connections to Florida were that on a few occasions Florida brokers secured insurance with TSC for non-resident ship-owners (other than Glovegold) and that TSC's underwriter visited these brokers about twice a year. (App. 5a-6a). The affidavit further stated that the claims office that examined

the damage to the ship was not an agent of TSC but merely a claims service facility appointed on a case-by-case basis, and which is not involved in the solicitation of business on behalf of TSC. (App. 32a). Glovegold submitted counter-affidavits, one of which stated that the *Anthenor Express* was docked in a Florida port at the time that the insurance policy was issued and when it was later renewed. (App. 4a). Because the essential facts were undisputed, the trial court decided the issue on the affidavits. The trial court granted the motion to dismiss, finding that TSC had not subjected itself to personal jurisdiction in Florida. (App. 28a).

Glovegold appealed and the First District Court of Appeal of Florida reversed. (App. 17a). After holding that there was a basis for jurisdiction under the state's long-arm statute, the appellate court recognized that it must perform a constitutional analysis to determine whether TSC had sufficient minimum contacts in Florida so as not to offend the requirements of due process. (App. 10a). The court acknowledged that Glovegold was not asserting general personal jurisdiction, which would require a showing that TSC's contacts with the forum consisted of continuous and systematic general business contacts. (App. 10a). Nevertheless, the District Court of Appeal reversed the trial court and agreed with Glovegold's claim of specific personal jurisdiction upon its conclusion that the lawsuit arose out of or related to TSC's contacts with Florida. (App. 17a). The Supreme Court of Florida declined to exercise its discretionary jurisdiction to review the case. (App. 19a).

REASONS FOR GRANTING THE WRIT

The decision of the court below represents a dangerous and unfair precedent to the international maritime insurance community. As America continues to become a more integral part of the global economy, it is imperative that individual states not be permitted to overreach their jurisdiction. The Court should grant certiorari because the decision below

conflicts with this Court's decisions on personal jurisdiction under the Due Process Clause.

While purporting to recognize the distinction between general jurisdiction and specific jurisdiction, the court below predicated its finding of specific jurisdiction on many facts applicable only to general jurisdiction. (App. 11a-12a). The facts pertinent to general jurisdiction were not relevant to the issue of specific personal jurisdiction that was before the court. The facts even arguably applicable to specific jurisdiction fell far short of the constitutional requirement of minimum contacts. (App. 12a).

The court below erroneously viewed the question of personal jurisdiction from the standpoint of the Plaintiff rather than the Defendant. TSC had no control over where the ship traveled, because those who chartered the ship dictated where it would go. Even if it were likely that the ship might sail in Florida waters, this Court has held that personal jurisdiction cannot be predicated upon foreseeability. *World-wide Volkswagen Corp. v. Woodson*, 444 U.S 286 (1980). Under the precedent of the decision below, a foreign maritime insurance company can be subject to suit in any state whose waters or ports the insured vessel chooses to frequent and where it happened to be when the policy was issued. In other words, happenstance would determine personal jurisdiction, a concept that this Court's decisions have consistently rejected as violative of due process. The Court should grant the writ and reverse the judgment of the First District Court of Appeal of Florida.

ARGUMENT

THE DECISION BELOW SQUARELY CONFLICTS WITH THIS COURT'S DECISIONS WHICH SET FORTH THE REQUIREMENTS FOR PERSONAL JURISDICTION

This court has recognized there are two types of personal jurisdiction, specific and general jurisdiction. *Helicopteros*

Nationales de Colombia S.A. v. Hall, 466 U.S. 408, 418 n.8 and 415 n.9, (1984). The Court explained that specific jurisdiction exists "when a state exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contact with the forum." *Id.* at 414 n.8. This type of jurisdiction is often referred to as "connexity jurisdiction" because it requires a causal connection between the defendant's activities in the forum state and the plaintiff's cause of action. *Am. Overseas Marine Corp. v. Patterson*, 632 So. 2d 1124 (Fla. Dist. Ct. App.), *rev. den.*, 641 So. 2d 1346 (Fla. 1994). In contrast, general jurisdiction exists "[w]hen a state exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's conduct with the forum." *Helicopteros*, 466 U.S. at 415 n.9. In order to establish general jurisdiction, the defendant's contacts with the forum must represent continuous and systematic general business contacts. *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945).

Glovegold did not claim general jurisdiction. (App. 10a). Therefore, the sole issue was whether specific jurisdiction existed. (App. 10a). In its opinion the District Court of Appeal of Florida announced that it relied upon the following factors in support of its holding on specific jurisdiction (App. 11a-12a):

> Accordingly, we note the following matters supported by the record: TSC entered into an insurance contract for a vessel primarily trading in and out of Florida; the vessel was in Florida at the time of the contract; the vessel was in Florida at the time of extension of the contract; the vessel was involved in previous litigation in Florida; TSC has a network of correspondents in the state; TSC utilized Florida insurance brokers; a Göteborg-based underwriter for TSC consistently visited Florida brokers for at least five years, including the time period when TSC insured the ANTHENOR EXPRESS; and, the mechanical problem that disabled a ship that frequented Florida ports in fact occurred in Florida waters, requiring

> the assistance of a Florida towing company and shipyard. These are the factors we apply to our analysis.

A majority of these factors relate only to claims of general personal jurisdiction because they have no connexity with the lawsuit.[1] The only factors arguably relevant to the cause of action are that the ship frequented Florida ports, that it was docked in Florida when the policy was issued, and that it was towed to a Florida shipyard after it broke down. Yet, none of these factors can form the basis for jurisdiction over TSC because they are all happenstance; i.e., matters over which TSC exercised no control.

The key to a determination of personal jurisdiction is the concept of "purposeful availment." This concept requires that a non-resident defendant exercise control over its actions, and purposely direct its activities to the forum state. *Hanson v. Denckla*, 357 U.S. 235 (1958). Thus, the unilateral activity of the plaintiff or a third party is insufficient to allow a court to exercise personal jurisdiction over a non-resident defendant. *Burger King Corp. v. Rudzewicz*, 471 U.S 462 (1985).

The unilateral role of ship charterers is well recognized. In rejecting a claim for personal jurisdiction over the owner of a tug on which the plaintiff was injured, the court in *Conner v. Bouchard Transportation Co. Inc.*, 1993 WL 388274 (E.D. Pa.), explained:

> . . . defendant Bouchard has no control over where its vessels sail. It operates strictly as a charter business, in which the charterer, rather than Bouchard, dictates

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[1] It is not surprising that Glovegold did not assert a claim for general jurisdiction. The network of correspondents referred to is simply a list of claims service facilities appointed to assist ship owners on a case-by-case basis. (App. 32a). *See Young v. Britannia Steam Ship Ins. Ass'n, Ltd.*, 1994 WL 320972 (E.D. La. 1994). Furthermore, it is clear that the brokers discussed by the court below were not agents of TSC, and did nothing more than occasionally obtain insurance on behalf of other foreign ship owners, not Glovegold. (App. 31a-32a).

> where the vessels are to go. Thus, the fact that Bouchard's ships dock in Pennsylvania can best be described as "haphazard and fortuitous," rather than systematic and continuous.

Likewise, in dismissing a claim for personal jurisdiction over a ship owner based on the ship's seventeen visits to New Jersey in the last four years, in *Nicolaisen v. Toei Shipping Company, Ltd.*, 722 F. Supp. 1162 (DC NJ 1989), *aff'd.* 887 F. 2d 262 (3d Cir. 1988), the court stated:

> Under the terms of the Toei-Reefer Express Time Charter Agreement, as with all time charters, it is the charterer, and not the owner, who directs where the vessel will voyage and at what ports the vessel will call.

In essence, the court below held that TSC had the requisite minimum contacts with Florida for specific personal jurisdiction because *it was foreseeable* that the ship would suffer a loss in Florida waters. Yet, it is well-settled that the risk of loss in a forum, even if foreseeable, is not sufficient to subject a foreign defendant to personal jurisdiction. *World-wide Volkswagen Corp.*, 444 U.S. 286.

Glovegold relied below upon *Commonwealth of Puerto Rico v. SS Zoe Colocotroni*, 628 F.2d 652 (1980), *cert. den.*, 450 U.S. 912 (1981). However, that was a case of general jurisdiction in which the court held that the insurance company's business in the forum satisfied the constitutional requirement of minimum contacts. A case more nearly on point is *Young v. Britannia Steam Ship Insurance Association, Ltd.*, 1994 WL 320972 (E.D. La. 1994), in which a longshoreman, who was injured off-loading cargo on a ship docked in Louisiana, argued that the Louisiana court had specific personal jurisdiction over a foreign insurance company that had insured the vessel. The court rejected the claim of specific personal jurisdiction, pointing out that the only contact between the defendant and Louisiana was that the defendant had insured a vessel which could foreseeably travel to Louisiana.

In the instant case, TSC issued a policy of insurance in Sweden, through a broker in London, England, which was delivered in Glasglow, Scotland. (App. 31a). The policy covered a vessel that was one of many vessels managed by Denholm Ship Management Ltd. based in Glasglow. (App. 31a). Glovegold is a company organized under the laws of Malta and has a principal place of business in Piraeus, Greece. (App. 3a). The only connection to Florida occurred because those who chartered the ship chose to visit some Florida ports, and the ship happened to be in a Florida port when the policy was issued. The ship broke down at sea and was only towed into Jacksonville because it was the closest port. The vessel just as easily could have been in the Bahamas at the time, or any other place where it traded. These contacts are not only fortuitous and attenuated, they are the result of the unilateral activity of third parties and cannot serve as the basis for a Florida court to exercise specific personal jurisdiction over TSC.

CONCLUSION

Under the rationale of the court below, a worldwide maritime insurance company must expect to be subjected to specific personal jurisdiction in any state one of its insured ships happens to frequent even though the insurer has no control over the ship's movement. Such a holding undermines the constitutional limits of personal jurisdiction established by this Court when it last addressed the subject eighteen years ago in *Helicopteros*.

Respectfully submitted,

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